



Petition to Renew a Current Exemption Under 17 U.S.C. § 1201

9th Triennial Rulemaking

Please submit a separate petition for each current exemption for which renewal is sought.

NOTE: Use this form if you want to renew a current exemption without modification. If you are seeking to engage in activities not currently permitted by an existing exemption, including those that would require the expansion of a current exemption, you must submit a petition for a new exemption using the form available at copyright.gov/1201/2024/new-petition.pdf.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption without modification using this form, and, separately, a petition for a new exemption that identifies the current exemption and addresses only those issues relevant to the proposed expansion of that exemption.

ITEM A. PETITIONERS AND CONTACT INFORMATION

Please identify the petitioners and provide a means to contact the petitioners and/or their representatives, if any. The “petitioner” is the individual or entity seeking renewal.

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Privacy Act Advisory Statement: Required by the Privacy Act of 1974 (P.L. 93-579)

The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office website and use by Copyright Office staff for purposes of the rulemaking proceeding conducted pursuant to 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this application. Please keep this statement and refer to it if we communicate with you regarding this petition.

ITEM B. IDENTIFY WHICH CURRENT EXEMPTION PETITIONERS SEEK TO RENEW

Check the appropriate box below that corresponds with the current temporary exemption (see **37 C.F.R. § 201.40**) the petitioners seek to renew. Please check only one box. If renewal of more than one exemption is sought, a separate petition must be submitted for each one.

Motion Pictures (including television programs and videos):

- Excerpts for use in documentary filmmaking or other films where use is in parody or for a biographical or historically significant nature
- Excerpts for use in noncommercial videos
- Excerpts for use in nonfiction multimedia e-books
- Excerpts for educational purposes by college and university faculty, students, or employees acting at the direction of faculty, or K–12 educators and students
- Excerpts for educational purposes by faculty and employees acting at the direction of faculty in massive open online courses (“MOOCs”)
- Excerpts for educational purposes in digital and literacy programs offered by libraries, museums, and other nonprofits
- For the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students, faculty, or staff with disabilities
- For the preservation or the creation of a replacement copy of the motion picture by libraries, archives, or museums
- For text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching

Literary Works:

- Literary works distributed electronically for text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching
- Literary works or previously published musical works that have been fixed in the form of text or notation whose technological protection measures interfere with assistive technologies
- Literary works consisting of compilations of data generated by medical devices or their personal corresponding monitoring systems, to access personal data

Computer Programs and Video Games:

- Computer programs that operate wireless devices, to allow connection to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones and portable all-purpose mobile computing devices to allow the device to interoperate with or to remove software applications (“jailbreaking”)
- Computer programs that operate smart televisions to allow the device to interoperate with software applications on the television for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate voice assistant devices to allow the device to interoperate with or to remove software applications for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate routers and dedicated network devices to allow the device to interoperate with software applications on the device for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that control motorized land vehicles, marine vessels, or mechanized agricultural vehicles or vessels for purposes of diagnosis, repair, or modification of the vehicle, including to access diagnostic data
- Computer programs that control devices designed primarily for use by consumers for diagnosis, maintenance, or repair of the device or system
- Computer programs that control medical devices or systems, and related data files, for diagnosis, maintenance, or repair of the device or system
- Computer programs for purposes of good-faith security research
- Video games for which outside server support has been discontinued, to allow individual play by gamers and preservation of games by libraries, archives, and museums (as well as necessary jailbreaking of console computer code for preservation uses only), and discontinued video games that never required server support, for preservation by libraries, archives, and museums
- Computer programs other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums
- Computer programs that operate 3D printers, to allow use of alternative material
- Computer programs for purpose of investigating potential infringement of free and open source computer programs
- Video games in the form of computer programs for purpose of allowing an individual with a physical disability to use alternative software or hardware input methods

ITEM C. EXPLANATION OF NEED FOR RENEWAL

Provide a brief explanation summarizing the continuing need and justification for renewing the exemption. The Office anticipates that petitioners will provide a paragraph or two detailing this information, but there is no page limit. While it is permissible to attach supporting documentary evidence as exhibits to this petition, it is not necessary. Below is a hypothetical example of the kind of explanation that the Office would regard as sufficient to support renewal of the unlocking exemption. The Office notes, however, that explanations can take many forms and may differ significantly based on the individual making the declaration and the exemption at issue.

Authors Alliance is a nonprofit organization with the mission to advance the interests of authors who want to serve the public good by sharing their creations broadly. We create resources to help authors understand and enjoy their rights and promote policies that make knowledge and culture available and discoverable. For more information, visit <http://www.authorsalliance.org>.

The Library Copyright Alliance (LCA) consists of two major library associations—the American Library Association (ALA) and the Association of Research Libraries (ARL)—that collectively represent over 100,000 libraries in the United States.

The American Association of University Professors (AAUP) is a nonprofit membership association of faculty and other academic professionals. Since our founding in 1915, the AAUP has helped shape American higher education by developing the standards and procedures that maintain quality in education and academic freedom in this country's colleges and universities. We define fundamental professional values and standards for higher education, advance the rights of academics, particularly as those rights pertain to academic freedom and shared governance, and promote the interests of higher education teaching and research.

As supporters of the existing text and data mining (“TDM”) exemption for motion pictures, the petitioners are well situated to affirm the continued need and justification for this exemption. Through our work, we have personal knowledge of the continued need for the exemption. We have continued to work with researchers, some of whom were named in the initial petition during the 2021 rulemaking, and many of whom are now actively relying on the TDM exemption in their research or developing plans to do so in the very near future. For example, Associate Vice Provost for Digital Scholarship and Associate Professor of Digital Humanities James Lee at the University of Cincinnati is researching depictions of changes in climate. To do that, he is using the exemption to build a corpus of novels and films to then conduct text and data mining, searching for climate change markers across those materials.

Similarly, John Bell, Director of the Data Experiences and Visualizations Studio and Digital Humanities Program Manager at Dartmouth Research Computing, is using the exemption for the “Deep Screens XR Project,” which extracts video files from 800+ DVDs of commercial narrative films, stores those videos in a secure compute environment, and processes them using machine learning-based methods to establish 3D body pose data on the actors in those films. Once data is extracted, it will be statistically analyzed to quantitatively fingerprint acting styles of different eras, genres, and individuals, and these abstracted movements will then be mapped to a 3D visualization environment viewable in virtual reality for classroom use.

Because this type of research requires substantial computing resources and institutional coordination (e.g., to comply with the exemption's security requirements), many of these projects are just now taking shape with the support of outside funding, for example through support from the Andrew W. Mellon Foundation to researchers at Stanford University, UC Berkeley, Dartmouth University, Bowdoin College, Temple University, the University of Cincinnati, and the University of Illinois Urbana-Champaign, see <https://www.mellon.org/grant-database/text%20and%20data%20mining>.

Additionally, over the past six months petitioner Authors Alliance has engaged with digital humanities research communities through a series of workshops focused on educating potential users about the exemption. So far, these workshops have included 195+ researchers, librarians, and other academic faculty from across the United States in workshops including at Duke University, Stanford University, the University of Michigan and with the Association for Computers in the Humanities. Through these workshops we have already heard from a wide range of researchers who are actively planning projects that would rely on the TDM exemption for both literary works and motion pictures.

ITEM C. EXPLANATION OF NEED FOR RENEWAL (CONT'D)

Based on all this, we have no reason to believe that the need for the exemption will abate during the next triennial period and in fact believe the exemption will become even more important as these research projects progress.

The existing record from the 2021 rulemaking explains well the legal and factual justifications for this exemption, and there are no material changes in facts, law, technology, or other circumstances that would justify failing to renew it. Fair use case law continues to evolve but no new developments affect the rationale supporting the Office's 2021 exemption recommendation. Industry practice also remains the same. Commercially licensed text and data mining products continue to be made available to research institutions, as they were at the time of the 2021 exemption and as is reflected in the existing record, but these licensed products do not allow researchers to license the full array of texts and films that are needed to engage in the research they seek to do, which remain protected from copying by the TPM technologies that the current exemption specifies. Further, because the exemption specifically excludes application to compilations of works that are licensed for TDM use, the emergence of additional licensed access to those compilations is not material. Technological developments have also not changed the need for the current exemption; OCR and similar technologies remain to the best of our knowledge an inadequate substitute for access to source copies for TDM research.

ITEM D. DECLARATION AND SIGNATURE

The declaration is a sworn statement made under penalty of perjury and must be signed by one of the petitioners named above.

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. Based on my own personal knowledge and experience, I have a good faith belief that but for the above-selected exemption's continuation during the next triennial period (October 2024–October 2027), technological measures controlling access to relevant copyrighted works are likely to diminish the ability of relevant users to make noninfringing uses of these works, and such users are likely to rely upon the above-selected exemption during the next triennial period.
2. To the best of my knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record (available at copyright.gov/1201/2021) that originally demonstrated the need for the above-selected exemption, such that renewal of the exemption would not be justified.
3. To the best of my knowledge, the explanation provided in Item C above is true and correct and supports the above statements.

Name/Organization:

If the petitioner is an entity, this declaration must be signed by an individual at the organization having appropriate personal knowledge.

Authors Alliance

Signature:

This declaration may be signed electronically (e.g., "/s/ John Smith").

/s/ Rachel Brooke

Date:

July 7, 2023